

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 95-497-C - ORDER NO. 95-1328✓  
JUNE 30, 1995

IN RE: Application of Kast Communications,	)	ORDER
Inc. for Approval of the Transfer of	)	DENYING
Certain Assets and Certificate of	)	MOTION TO
Public Convenience and Necessity to	)	WAIVE HEARING
The Furst Group.	)	

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the Motion to Waive Hearing filed by Kast Communications, Inc. ("Kast").

On February 10, 1995, Kast filed an Application with the Commission requesting approval of the transfer of certain of its assets and its Certificate of Public Convenience and Necessity to provide intrastate resold telecommunications services to The Furst Group ("TFG"). The Application was duly noticed, and the Commission received no opposition the Kast's Application. A hearing is scheduled on Kast's Application to begin at 11:00 a.m. on Wednesday, July 19, 1995. By its Motion to Waive Hearing, Kast requests that the scheduled hearing be waived and that its Application be considered on its written Application and the verified pre-filed testimony.

S.C. Code Ann. §58-9-310 (Cum. Supp. 1994) provides that "[n]o telephone utility, without the approval of the Commission

after due hearing and compliance with all other existing requirements of the laws of the State in relation thereto, may sell, transfer, lease, consolidate, or merge its property, powers, franchises, or privileges or any of them ...."

By its Motion, Kast submits that it is the only party due a hearing in this matter and that it waives its right to a hearing. Further, Kast submits that the nature of the contemplated transfer, where the acquisition of assets is by common shareholders of the transferor and transferee, makes this case appropriate to waive the a hearing.

The Commission disagrees with Kast's assertions. The word "due" is a relative term which must be applied carefully and in the particular circumstances of each case. Kast's assertions would equate the term "due" with the term "contested". The Commission believes that the term "due" in the phrase "due hearing" as used in S.C. Code Ann. §58-9-310 (Cum. Supp. 1994) is not synonymous with "contested" hearing. The plain language in §58-9-310 provides no exception to the hearing requirement for cases where no opposition is received or where the transfer is between common shareholders of the parties. The statute in question provides for one exception to the hearing requirement, and that exception is not applicable in this case because the exception pertains only to telephone cooperative associations.

Therefore, pursuant to the requirements of S.C. Code Ann. §58-9-310 (Cum. Supp. 1994) which requires "due hearing," the Commission denies Kast's Motion to Waive Hearing.

This Order shall remain in full force and effect until  
further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy, Executive Director  
(SEAL)